IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

Crl.Rev.Pet.No. 1024 of 1998()

AGAINST THE ORDER DATED 18/11/1998 IN CRMP 4536/98 IN CC.378/1996 of CHIEF JUDICIAL MAGISTRATE COURT, PATHANAMTHITTA .

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REVN. PETITIONER: 3RD ACCUSED

MARY THOMAS, KALLOOPARAMBIL
THOPPIL HOUSE, PALLOM P.O.,
KOTTAYAM DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENT:

STATE OF KERALA, REP.BY THE
DEPUTY SUPERINTENDENT OF POLICE
CRIME BRANCH , C.I.D THIRUVANANTHAPURAM,
REP.BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 23/07/2007, ALONG WITH CRRP NO. 1025 OF 1998 AND CONNECTED CASES THE COURT ON 27/07/2007 PASSED THE FOLLOWING:

CRL.RP. NO.1024/1998

ORDER ON CRL.MP. NO.5150/1998 IN CRL.RP. NO.1024/1998

DISMISSED

27/07/2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.SA. TO JUDGE

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K.R. UDAYABHANU, J.

CRL.R.P.Nos1024, 1025, 1026,1036,
1037 and 1038 of 1998

Dated 27th July, 2007

ORDER

The revision petitioner in Crl.R.P.Nos.1024, 1025 and 1026 of 1998 is the 3rd accused in C.C.Nos.377, 378 and 379 of 1996; revision petitioner in Crl.R.P.Nos.1036, 1037 and 1038 of 1998 is the 6th accused in the above C.Cs with respect to the offences under sections 406, 409, and 420 read with section 34 IPC. They had applied for discharge before the court below vide Crl.M.P.Nos.4533, 4535, 4536, 4538, 4532 and 5351 of 1996. The above applications were dismissed by the court below. The revision petitioners have contended that they have nothing to do with the alleged offences. 3rd accused has contended that she was not a partner in the firm at the relevant period when the offences were committed and even earlier she was only a sleeping partner. 6th accused has contended that he was never a partner in the firm and the present case against him is only based on section 161 Cr.P.C.statement of some of the witnesses which according to him was fabricated by the prosecution. The counsel for the revision petitioner also contended that A5 Sri V.V.R.Menon whose name was

also mentioned by witnesses was discharged by the court below vide Annexure A order in M.P.Nos. 2029, 2031 and 2033/98 in C.C. Nos.377, 378 and 379 of 1996.

2. So far A6 is concerned, according to the counsel for the revision petitioners, he happened to be the brother of A1, and apart from the above relationship, he has no connection in the business affairs of A1 and others. It is also pointed out that there is no case that he has amassed any wealth out of the illegal transactions at the instance of the partnership conducted by the other accused. The only evidence against him is the statement in general made by some of the witnesses wherein the names of all the accused including the discharged A5 has been mentioned. I find that in the common order of the court below, the case set up by A6 has not been separately considered.

3. So far as A3 is concerned, the court below rejected her contention on the basis that the settlement deeds as per which she has allegedly retired from partnership was executed in stamp papers purchased on 29-3-88 and that the documents produced to show the fact that she has retired from partnership

much before the date of the alleged transactions and the documents that would show that the partnership has been reconstituted are of Photostat copies. It is the contention of the counsel for the revision petitioner that all the original documents were seized by the prosecuting agency. According to him, it is on the basis of the same set of facts that A5 has been discharged. It is submitted that A3 has been married away and living with her husband and has nothing to do with the partnership that got involved in the alleged offences.

4. I find that the court below has considered the contentions of A3, Mary Thomas in detail and held that her case for discharge is based on unregistered documents executed on document papers purchased much earlier, unregistered settlement deeds are dated 21-3-1991 and the stamp papers are purchased on 29-3-1988. No objective evidence as to whether the reconstitution of the firm has been effected and whether the alleged retirement has been communicated to the Registrar of Firms has been produced. It was in the above circumstances that it was held that she has not established her case that she

has retired prior to the alleged transaction. I find that it is for her to establish her case of non-involvement before the court below. The case set up that her case is the same that of A5, Radhakrishnna Menon and that his contention for discharge was allowed vide order in Crl.M.P.Nos.2029, 2031 and 2033/1998 is totally incorrect. The above petitioner/accused had produced the relevant objective evidence to establish that he had retired from the firm much before and that he has not involved in the affairs of the firm. Hence, I find that there is no merit in the contention of A3/the revision petitioner in Crl.R.P.Nos. 1024, 1025 and 1026/1998 and hence the above revision petitions are dismissed.

5. So far as the case of A6 who is the revision petitioner in Crl.R.P.Nos.1036, 1037 & 1038/1998 is concerned, the court below has not at all considered his case that he never was a partner of the accused firm and that he has not got involved in any of the affairs of the firm and that he has been implicated only because happened to be the brother of the partners. Hence, I find that the court below has to consider his case for discharge

and pass appropriate orders.

In the result, the order in Crl.M.P. Nos.4536/1998 in C.C.No.378/1996, Crl.M.P.No. 4535/1998 in C.C.No.377/1996 and Crl.M.P.No.5351/1998 in C.C.No.379/1996 is herewith set aside. The court below is herewith directed to consider the case set up by A6 and dispose of the same by a reasoned order. The case of A6 is remitted back to the trial court. The matter would be posted before the court below on 10-8-2007.

K.R.UDAYABHANU,
JUDGE.

Kvm/-

K.R.UDAYABHANU, J.

CRL.R.P.NOS. 1024, 1025,1026
1036, 1037 & 1038/1996.

ORDER

27-7-2007.